IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) S.B. Civil Revision Petition No.278/2002
Rajasthan Financial Corporation. vs. Kailash Chandra & ors.

(2) S.B. Civil Misc. Appeal No.707/2002
Govind Ram & anr. vs. Rajasthan Financial Corporation & anr.

against the order dated 23.11.2001 passed by the learned Addl. District Judge No.3, Jodhpur in Civil Misc. Cases Nos.19-B/94 and 28-B/94.

Date of Judgment: October 06, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. N.M. Lodha for Rajasthan Financial Corporation,
Mr. Suresh Srimali for appellant in Appeal No.707/2002.
Mr. R. K. Thanvi for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

Revision Petition No.278/2002 has been preferred by the Rajasthan Financial Corporation against the order of the trial court dated 23.11.2001 by which the trial court set aside the ex parte decree purported to be against the applicant-petitioner Kailash Chand on payment of cost of Rs.1000/-. The trial court by the same order dismissed the applications filed by the defendants Govind Ram and

Laxman Das for setting aside of the same ex parte decree, therefore, Govind Ram and Laxman Das have preferred S.B.Civil Misc. Appeal No.707/2002. Both revision petition and the appeal are heard and decided by this order.

The petitioner Rajasthan Financial Corporation has challenged the order of the trial court on the ground that the court below has committed serious error of fact as well as error of law in setting aside the ex parte decree passed by the trial court on 18.5.1991 on the application filed by Kailash Chand. According to the learned counsel for the petitioner, the notice was served upon said Kailash Chand and thereafter one advocate appeared on behalf of Kailash Chand and sought time and thereafter no body appeared. Therefore, there was no reasonable reason for setting aside of the decree.

I considered the submissions of the learned counsel for the petitioner and perused the reasons given by the court below for setting aside the decree against Kailash Chand. But before considering the reasons given by the court below, it will be appropriate to point out that in fact the Rajasthan Financial Corporation filed the suit for recovery of certain amount against defendant-M/s Deep Biscuit Factory. Kailash Chand, Govind Ram and Laxman Das were impleaded as party as partners of the sole defendant M/s Deep Biscuit Factory. It appears that the court proceeded on premises that each of the partners of

defendant- firm individually was impleaded as separatre party in the suit whereas the title of the suit discloses that the Rajasthan Financial Corporation itself has impleaded defendant-M/s Deep Biscuit Factory and the said factory was represented by the partners.

The decree could have been set aside against the firm itself on the application of the partners of the firm but the trial court passed the order to set aside the decree against one of the partners of the defendant-firm. That appears to be not proper. So far as on merits, the trial court relied upon the statement of the applicant Kailash Chand who stated that he was not residing at the address given in the summon and that statement remained unrebutted. The trial court also considered the fact that the learned advocate put in appearance on behalf of the defendant but he did not file the power. Therefore, the trial court recoded the finding of fact in favour of the applicant Kailash Chand after accepting his plea that he was not aware of the suit proceedings and this finding of fact cannot be interfered by this Court while exercising jurisdiction under Section 115, C.P.C.

In view of the above reason, I do not find any merit in the Revision Petition no.278/2002 and hence the revision petition is dismissed.

The trial court though gave reasons for not setting aside of the ex parte decree against the two of the partners of the same firm who was

defendant in the suit, but it appears from the facts mentioned above itself that once the decree has been set aside against the firm, there cannot be liability of the partners after setting aside of the decree against the firm. In view of the simple said reason, the appeal preferred by the appellants Govind Ram and Laxman Das deserves to be allowed. Hence allowed and the order of the court below is modified and the ex parte against the firm M/s Deep Biscuit Factory through its partners is set aside.

(PRAKASH TATIA),J.

mlt.